

W A R N I N G

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

November 14, 2018
Sent Via Email:
jmbcriminaldefense@gmail.com

Michael Starr c/o Jim Bishop
110 West C Street
Suite 1809
San Diego, CA 92101

Re: Star Mercury Superfund Site
CERCLA Section 106(a) Unilateral Administrative Order for Removal Actions

Dear Mr. Starr:

This letter transmits a copy of the fully executed Unilateral Administrative Order (the "UAO") at the Star Mercury Superfund Site, which includes three residential properties and one storage facility in San Diego County, California.

Thank you for your prompt attention to this matter. If you have any questions or need additional information about the requirements of this UAO, please feel free to contact Robert Wise of my staff at (562) 733-0466, or have your counsel contact Rebekah Reynolds, in the Office of Regional Counsel, at (415) 972-3916.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Meer", is positioned above the typed name of the sender.

Daniel Meer
Assistant Director
Superfund Division

Enclosure

IN THE MATTER OF:)	
)	
)	CERCLA Docket No. 2019-04
Star Mercury Superfund Site)	
San Diego County, California)	
Michael Starr)	
)	
Respondent)	
)	
Proceeding under Section 106(a))	
of the Comprehensive Environmental)	
Response, Compensation, and Liability)	
Act, as amended, 42 U.S.C. § 9606(a).)	
)	
)	

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order (“Order”) is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14A and 14-14B. This authority was further redelegated by the Regional Administrator of EPA Region 9 to the director, deputy director, and branch chiefs or equivalent of the Superfund Division by Region 9 delegation numbers R9-1200 TN 2018-01 (May 9, 2018) and R9-1200 TN 2017-01 (March 3, 2017).

2. This Order pertains to four properties contaminated with mercury located in San Diego County, California (the “Star Mercury Superfund Site”) or the “Site.” This Order requires Respondent Michael Starr (as defined below) (“Respondent”) to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of California (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondent and his heirs, successors, and assigns. Any change in ownership or control of the Site, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent’s responsibilities under this Order.

5. Respondent shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondent or his contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that his contractors and subcontractors perform the Work in accordance with the terms of this Order.

III. DEFINITIONS

6. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in appendices to or documents incorporated by reference into this Order, the following definitions shall apply:

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource

use restrictions are needed to implement the removal action, including, but not limited to, the following properties in San Diego County, California: the Golden Triangle Storage facility located at 10345 Sorrento Valley Road in the City of San Diego (Storage Facility); a residential home in San Pasqual Valley in the City of Escondido (Escondido Home 1); a residential home bounded to the north by San Pasqual Valley Road, to the and east by San Pasqual Road, and to the west by Bear Valley Parkway in the City of Escondido (Escondido Home 2); and a residential home on La Jolla Farms Road in the City of La Jolla (La Jolla Home).¹

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Order as provided in Section VIII.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Non-Respondent Owner” shall mean any person, other than Respondent, that owns or controls any Affected Property. The phrase “Non-Respondent Owner’s Affected Property” means Affected Property owned or controlled by Non-Respondent Owner.

“Order” shall mean this Unilateral Administrative Order and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

¹ The addresses of the residential properties are included in the confidential section of the administrative record.

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral or an upper or lower-case letter.

“Parties” shall mean EPA and Respondent.

“RCRA” shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992.

“Respondent” shall mean Michael Starr (also known as Michael S. Starr Sr., Michael S. Reed, Michael Starr Reed, and Michael A. Starr).

“Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in monitoring and supervising Respondent’s performance of the Work to determine whether such performance is consistent with the requirements of this Order, including costs incurred in reviewing deliverables submitted pursuant to this Order, as well as costs incurred in overseeing implementation of this Order, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.

“Section” shall mean a portion of this Order identified by a Roman numeral.

“Site” shall mean the Star Mercury Superfund Site, encompassing three residential homes and one Storage Facility in San Diego County, California.

“State” shall mean the State of California.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities Respondent is required to perform under this Order, except those required by Section XV (Retention of Records).

IV. FINDINGS OF FACT

7. The Star Mercury Site consists of four properties, three residential homes (Escondido Homes 1 and 2 and La Jolla Home) and a commercial property (Storage Facility) in San Diego County, California, where EPA observed pervasive and significant mercury contamination.

8. Respondent rented several houses in San Diego County, including La Jolla Home, and Escondido Homes 1 and 2, where he used mercury amalgamation to perform gold recovery operations. He also rented, or had access to, five storage lockers at the Storage Facility where he stored mercury and other hazardous substances.

9. During the week of October 22, 2018, the San Diego County Environmental Health's Hazardous Incidence Response Team ("HIRT") became aware of the activities of Respondent at the La Jolla Home and then at the Storage Facility.

10. On October 26, 2018, HIRT contacted EPA for technical assistance in assessing the chemicals and mercury contamination at several storage units that Respondent rented at the Storage Facility.

11. Upon arrival at the Storage Facility, EPA observed four 10'x 20' storage lockers and a 10'x 35' storage locker that were contaminated with mercury. EPA observed that Locker 1 contained approximately 200 thirty-gallon plastic totes, and many five-gallon buckets and one-gallon buckets. These containers contained a variety of chemicals, including heavy metals, corrosives, oxidizers. After EPA and HIRT assessed the property, they determined that the lockers contained poisons, corrosives, heavy metals, oxidizers and flammables. In addition, the inside of the storage containers were contaminated with elemental mercury, some in excess of 50,000 ng/m³. Lockers 2, 4 and 5 contained storage totes and boxes containing personal items. Most of these boxes were contaminated with mercury vapors in excess of the 6,000 ng/ m³ action level. Many of these boxes contained mercury vapor concentrations in excess of 50,000 ng/m³.

12. During the cleanup of the units, EPA and HIRT identified additional residential homes that Respondent had rented, including Escondido Homes 1 and 2. EPA and HIRT then surveyed the La Jolla Home and Escondido Homes 1 and 2 and made the following findings:

a. La Jolla Home: Mercury contamination was found in various sink drain traps inside the house. Liquid mercury was discovered in a number of the traps. A Lumex Mercury Vapor Analyzer (MVA) documented contamination levels up to 80,000 ng/m³ within the drain traps. Mercury contamination was also found in excess of 50,000 ng/m³ in all of the solid waste trash cans stored outside the home. Mercury contamination also was found in an outbuilding erected by Respondent.

b. Escondido Home 1: EPA and HIRT found soil contaminated by mercury in excess of 50,000 ng/m³ next to the garage and in the planter box in front of the garage.

c. Escondido Home 2: EPA and HIRT found visible elemental mercury contamination throughout the expansion joints in the garage and in the garage cabinets. The homeowner's personal items within the garage were found to be heavily contaminated with mercury vapors. Mercury contamination in soil ranged from 6,000 to 50,000 ng/m³.

13. On October 31, 2018, EPA issued Notices of Federal Response Action ("NFRA") to Mr. Starr for Escondido Home 1. On November 1, 2018, EPA issued three NFRAs to Mr. Starr for the Storage Facility, Escondido Home 2 and La Jolla Home. These NFRA letters outlined the actions that EPA considered necessary for a proper response and provided Respondent an opportunity to conduct the work. The NFRAs asked Respondent to return the

NFRAs to EPA and acknowledge receipt. Respondent did not return the NFRAs to EPA acknowledging receipt nor has Respondent conducted the work outlined in the NFRAs.

14. Human exposures to elemental or metallic mercury most often occur when metallic mercury is spilled, or when products that contain metallic mercury break, so that mercury is exposed to air. Elemental or metallic mercury mainly causes health effects when inhaled as a vapor or where it can be absorbed through the lungs. Symptoms of prolonged and/or acute exposures include tremors, emotional changes (such as mood swings, irritability, nervousness, excess shyness), insomnia, neuromuscular changes (such as weakness, muscle atrophy, twitching, headaches, disturbances in sensations, changes in nerve responses, and poor performance on tests of mental function). Higher exposures may also cause kidney effects, respiratory failure and death.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Mercury Star Superfund Site includes four “facilities” (Escondido Homes 1 and 2, La Jolla Home, and Storage Facility) as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Respondent is a liable party under one or more provisions of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(1) Respondent is the “operator” of the facilities, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(2) Respondent was the “operator” of the facilities at the time of disposal of hazardous substances at the facilities, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

d. The contamination from mercury found at the three residential properties (Escondido Homes 1 and 2 and La Jolla Home), and the contamination from mercury and other chemicals found at the Storage Facility, as identified in the Findings of Fact above, includes mercury, a “hazardous substance” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

e. The conditions described in the Findings of Fact above constitute an actual and/or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The conditions at the Site may constitute a threat to public health or welfare or the environment, based on the factors set forth in Section 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following:

(1) actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances; this factor is present at the Site due to the existence of mercury in soil and debris;

(2) hazardous substances and pollutants or contaminants in barrels, storage containers, that may pose a threat of release; this factor is present at the Site due to the existence of over two thousand containers stored at the Storage Facility;

(3) high levels of hazardous substances in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of mercury in soils at the (Escondido 1 and 2 and La Jolla Home);

(4) weather conditions that may cause hazardous substances to migrate or be released; this factor is present at the Site due to the existence of entering the rainy season and the presence of mercury in soil;

(5) threat of fire or explosion; this factor is present at the Site due to the existence of ignitable chemicals stored at the Storage Facility; and

(6) the unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site.

g. The conditions described in the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

h. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

VI. ORDER

16. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, Respondent is hereby ordered to comply with all provisions of this Order and any modifications to this Order, including all appendices to this Order and all documents incorporated by reference into this Order.

VII. OPPORTUNITY TO CONFER

17. No later than three (3) days after this Order is signed by the Assistant Director of the Superfund Division or his delegatee, Respondent may, in writing, a) request a conference with EPA to discuss this Order, including its applicability, the factual findings and the

determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions that Respondent may have regarding this Order, or b) notify EPA that he intends to submit written comments or a statement of position in lieu of requesting a conference.

18. If a conference is requested, Respondent may appear in person or by an attorney or other representative. Any such conference shall be held no later than three (3) days after the conference is requested. Any written comments or statements of position on any matter pertinent to this Order must be submitted no later than three (3) days after the conference or six (6) days after this Order is signed if Respondent does not request a conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

Rebekah Reynolds, Office of Regional Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3916
reynolds.rebekah@epa.gov

VIII. EFFECTIVE DATE

19. This Order shall be effective three (3) days after the Order is signed by the Assistant Director of the Superfund Division or his delegatee unless a conference is requested or notice is given that written materials will be submitted in lieu of a conference in accordance with Section VII (Opportunity to Confer). If a conference is requested or such notice is submitted, this Order shall be effective on the sixth (6th) day after the day of the conference, or if no conference is requested, on the sixth (6th) day after written materials, if any, are submitted, unless EPA determines that the Order should be modified based on the conference or written materials. In such event, EPA shall notify Respondent, within the applicable six (6) day period, that EPA intends to modify the Order. The modified Order shall be effective three (3) days after it is signed by the Assistant Director of the Superfund Division or his delegatee.

IX. NOTICE OF INTENT TO COMPLY

20. On or before the Effective Date, Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order. Such written notice shall be sent to EPA as provided in Paragraph 18. Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense asserted by such Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondent's assertions. Failure of Respondent to provide such notice of intent to comply within this time period shall, as of the Effective Date, be treated as a violation of this Order by Respondent.

X. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

21. **Selection of Contractors, Personnel.** All Work performed under this Order shall be under the direction and supervision of qualified personnel. Within one (1) day after the Effective Date, and before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of the Work, Respondent retains additional contractors or subcontractors, Respondent shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least three (3) days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within three (3) days after EPA's disapproval. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that it does not have a conflict of interest with respect to the project. All contractors must have a mercury vacuum and a mercury vapor analyzer capable of conducting clearance sampling and demonstrate compliance with 29 C.F.R. § 1910.120: Hazardous Waste Operations and Emergency Response (HAZWOPER); 29 C.F.R. § 1910.120(b)(1) (written safety and health program plan and all ancillary plans); a medical surveillance program (29 C.F.R. 1910.120(f)); and training (29 C.F.R. § 1910.120(e)).

22. Within one (1) day after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Order and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 21 (Selection of Contractors, Personnel). If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within three (3) days following EPA's disapproval. Respondent shall have the right to change his Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA three (3) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Communications between Respondent and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

23. EPA has designated Robert Wise of the Superfund Division, Region 9, as its On-Scene Coordinator (OSC). EPA will notify Respondent of a change of its designated OSC. Communications between Respondent and EPA, and all documents concerning the activities

performed pursuant to this Order, shall be directed to the OSC in accordance with Paragraph 28.a(1).

24. The OSC shall be responsible for overseeing Respondent's implementation of this Order. The OSC shall have the authority vested in a Remedial Project Manager (RPM) and an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other response action when he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the OSC from the Site shall not be cause for stoppage or delay of Work.

XI. WORK TO BE PERFORMED

25. Respondent shall perform, at a minimum, all actions necessary to remove and properly dispose of the mercury contamination from the Site (i.e., the Storage Facility, Escondido Homes 1 and 2, and La Jolla Home, including the inside of all structures, outside surfaces, and soil. The actions to be implemented generally include, but are not limited to, the characterizing, collecting, removing and properly disposing of all hazardous substances at the Site.

26. For any regulation or guidance referenced in the Order, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment, or replacement.

27. Work Plan and Implementation

a. Within three (3) days after the Effective Date, in accordance with Paragraph 28 (Submission of Deliverables), Respondent shall submit to EPA for review and approval a draft work plan for performing the removal actions (the "Removal Work Plan") generally described in Paragraph 25 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the Work required by this Order. The draft Removal Work Plan shall include:

(1) A Sampling and Analytical Plan (SAP) for all sampling activities at each of the four properties including hazardous waste characterization, structural contamination assessment, pre-removal soils assessment (surface and subsurface); and post removal confirmation sampling and structural clearance;

(2) Procedures for characterizing, collecting, removing and properly disposing of all CERCLA hazardous substances at the Site (including elemental mercury, contaminated household items, contaminated building debris and contaminated soil) by December 15, 2018;

(3) Procedures for ensuring that the cleanup meets the following criteria: (i) interior cleanup level shall be 1,000 ng/m³ as described in "Chemical-Specific Health Consultation for Joint EPA/ATSDR National Mercury Cleanup Policy Workgroup Action Levels for Elemental Mercury Spills, March 22, 2012; (ii) the clearance of the Site must follow the guidance provided pursuant to the EPA National Mercury Cleanup Policy Workgroup Indoor Mercury Spills – Area Clearance Procedure, 08/24/2012; (iii) the soil cleanup level must be to the most current EPA Region 9 Preliminary Remediation Goals plus background; and (iv) the cleanup must be consistent with the report titled "Chemical-Specific Health Consultation for Joint EPA/ATSDR National Mercury Cleanup Policy Workgroup Action Levels for Elemental Mercury Spills," dated March 22, 2012 (Attachment A), and the "Indoor Mercury Spills-Area Clearance Procedure," dated August 24, 2012 (Attachment B), or equivalent; and

(4) Procedures for ensuring that all properties within the Site are restored to pre-contamination conditions.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within three (3) days after receipt of EPA's notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

c. Upon approval or approval with modifications of the Removal Work Plan Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence or perform any Work except in conformance

with the terms of this Order. Respondent shall notify EPA at least forty-eight (48) hours prior to performing any Work on-Site pursuant to the EPA-approved Removal Work Plan.

d. Unless otherwise provided in this Order, any additional deliverables that require EPA approval under the Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

e. Any non-compliance with any EPA-approved plans, reports, specifications, schedules, or other deliverables shall be considered a violation of the requirements of this Order. Determinations of non-compliance shall be made by EPA. Approval of the Removal Work Plan shall not limit EPA's authority under the terms of this Order to require Respondent to conduct activities consistent with this Order to accomplish the Work outlined in this Section.

28. Submission of Deliverables

a. General Requirements for Deliverables

(1) Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the OSC at, Robert Wise, USEPA Superfund Warehouse (SFD-9-2), 2445 North Palm Drive, Signal Hill, California, 90755, (562) 733-0466, wise.robert@epa.gov. Respondent shall submit all deliverables required by this Order or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 28.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondent shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables

(1) Sampling and monitoring data should be submitted in standard Regional EDD format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software,

the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://www.epa.gov/geospatial/epa-metadata-editor>.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

29. Health and Safety Plan. Within three (3) days after the Effective Date, Respondent shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of on-site workers and the public during performance of on-site Work under this Order. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal actions.

30. Progress Reports. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order on weekly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVI, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

31. Final Report. Within sixty (60) days after completion of all Work required by this Order, with the exception of any continuing obligations required by this Order, including reimbursement of Response Costs, or record retention, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. EPA will review and approve the final report in accordance with Section XXVI (Notice of Completion of Work). The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying

appendices containing all relevant documentation generated during the removal actions (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

32. Off-Site Shipments

a. Respondent may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if he complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, he provides written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent shall also notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if he complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Action Memorandum. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

XII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

33. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003 (March 2001, reissued May

2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

34. Access to Laboratories

a. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent pursuant to this Order. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories he utilizes for the analysis of samples taken pursuant to this Order meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<https://www.epa.gov/clp>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<https://www.epa.gov/hw-sw846>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<https://www3.epa.gov/ttnamti1/airtox.html>)." However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories he uses for analysis of samples taken pursuant to this Order have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

b. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than one (1) day in advance of any sample collection activity. In addition, EPA shall have the right to take any

additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

c. Respondent shall submit to EPA, in the next monthly progress report as described in Paragraph 30 (Progress Reports) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Order.

XIII. PROPERTY REQUIREMENTS

35. **Agreements Regarding Access and Non-Interference.** Respondent shall, with respect to any Non-Respondent Owner's Affected Property, use best efforts to secure from such Non-Respondent Owner an agreement, enforceable by Respondent and EPA, providing that such Non-Respondent Owner: (i) provide EPA, Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those activities listed in Paragraph 35.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action, Respondent shall provide a copy of such access agreement(s) to EPA.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan;
- (7) Implementing the Work pursuant to the conditions set forth in Section XIX (Enforcement/Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or his agents, consistent with Section XIV (Access to Information);

(9) Assessing Respondent's compliance with the Order;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

36. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within three (3) days after the Effective Date, Respondent is unable to accomplish what is required through "best efforts" he shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent or take independent action in obtaining such access and/or use restrictions. EPA reserves the right to seek payment from Respondent for all costs, including cost of attorneys' time, incurred by the United States in obtaining such access or agreements to restrict land, water, or other resource use.

37. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondent shall continue to comply with his obligations under this Order, including his obligation to secure access.

38. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. ACCESS TO INFORMATION

39. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of his contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, his employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

40. Privileged and Protected Claims

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 40.b, and except as provided in Paragraph 40.c.

b. If Respondent asserts a claim of privilege or protection, he shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that he claims to be privileged or protected until EPA or a court determines that such Record is privileged or protected.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Order.

41. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA under this Section or Section XV (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this UAO for which Respondent asserts business confidentiality claims. Records that Respondent claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Record is not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

42. Notwithstanding any provision of this Order, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XV. RETENTION OF RECORDS

43. During the pendency of this Order and for a minimum of ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in his possession or control, or that come into his possession or control, that relate in any manner to his liability under CERCLA with respect to the Site, provided, however, that Respondent retains, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct his contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in his possession or control or that come into his possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and his contractors and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records required to be

retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

44. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 40, Respondent shall deliver any such Records to EPA.

45. Within three (3) days after the Effective Date, Respondent shall submit a written certification to EPA's OSC that, to the best of his knowledge and belief, after thorough inquiry, he has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to his potential liability regarding the Site since notification of his potential liability by the United States, and that he has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927. If Respondent is unable to so certify, he shall submit a modified certification that explains in detail why he is unable to certify in full with regard to all Records.

XVI. COMPLIANCE WITH OTHER LAWS

46. Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondent shall include ARARs selected by EPA in the Removal Work Plan.

47. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XVII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

48. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of any Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his

unavailability, the Regional Duty Officer at (800) 300-2193 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

49. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the OSC, or, in the event of his unavailability, the Regional Duty Officer at (800) 300-2193, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, the reporting required by CERCLA § 103 or EPCRA § 304.

50. For any event covered under this Section, Respondent shall submit a written report to EPA within seven (7) days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XVIII. PAYMENT OF RESPONSE COSTS

51. Upon EPA's written demand, Respondent shall pay EPA all Response Costs incurred or to be incurred in connection with this Order. On a periodic basis, EPA will send Respondent a bill requiring payment of all Response Costs incurred by the United States with respect to this Order that includes a cost summary, which includes direct and indirect costs incurred by EPA, its contractors, and the Department of Justice.

52. Respondent shall make all payments within thirty (30) days after receipt of each written demand requiring payment. Unless otherwise instructed by EPA, payment shall be made to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A9C1 and the EPA docket number for this action.

53. At the time of payment, Respondent shall send notice that payment has been made to Robert Wise at wise.robert@epa.gov, Elaine Chan at chan.elaine@epa.gov, and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number A9C1 and the EPA docket number for this action.

54. In the event that the payments for Response Costs are not made within thirty (30) days after Respondent's receipt of a written demand requiring payment, Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section. Respondent shall make all payments required by this Paragraph in the manner described in Paragraphs 52 and 53.

XIX. ENFORCEMENT/WORK TAKEOVER

55. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondent to civil penalties of up to \$55,907 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43,091, 40 C.F.R. Part 19.4. In the event of such willful violation, or failure or refusal to comply, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. Respondent may also be subject to punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

XX. RESERVATIONS OF RIGHTS BY EPA

56. Nothing in this Order shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Order shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

XXI. OTHER CLAIMS

57. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or his employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

58. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such

person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

59. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), or 40 C.F.R. § 300.700(d).

60. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. INSURANCE

61. No later than three (3) days before commencing any on-site Work, Respondent shall secure, and shall maintain for the duration of this Order, commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Order. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that his contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Mercury Star Superfund Site, San Diego County, California and the EPA docket number for this action.

XXIII. MODIFICATION

62. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA within three (3) days, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by signature of the Assistant of the Superfund Division of EPA Region 9.

63. If Respondent seeks permission to deviate from any approved Work Plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving approval from the OSC pursuant to Paragraph 62.

64. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of his obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXIV. DELAY IN PERFORMANCE

65. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the OSC within forty-eight (48) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone and email, Respondent shall provide to EPA written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

66. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of Paragraph 65 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

XXV. ADDITIONAL REMOVAL ACTIONS

67. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination and will either modify this Order or issue a new Order to address any additional removal actions.

XXVI. NOTICE OF COMPLETION OF WORK

68. When EPA determines, after EPA's review of the final report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including reimbursement of Response Costs, and Record Retention, EPA will provide written notice to Respondent. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan, if appropriate, in order to correct such deficiencies within three (3) days after receipt of the EPA notice. The modified Work Plan shall include a schedule for correcting such deficiencies. Within three (3) days after receipt of written approval of the modified Work Plan, Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.


XXVII. ADMINISTRATIVE RECORD

69. EPA will establish an administrative record which contains the documents that form the basis for the issuance of this Order. No later than sixty (60) days after initiation of on-site removal activity, it shall be made available for review by appointment on weekdays between the hours of 8am and 5pm at the EPA Record Center in Room 3110, 75 Hawthorne Street, San Francisco, California, 94105 offices. To review the administrative record, please contact the Regional Record Center at (415) 947-8717 to make an appointment.

XXVIII. SEVERABILITY

70. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

It is so ORDERED.

BY: 

Daniel Meer
Assistant Director
Region 9
U.S. Environmental Protection Agency

DATE: 14 November 2018

EFFECTIVE DATE: November 17, 2018